IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 18233 of 2007(U)

PETITIONER:

C.BALAGOPAL, MANAGING DIRECTOR,
TERUMO PENPOL LIMITED,
PULIYARAKONAM, THIRUVANANTHAPURAM.

BY ADV. SRI.SAJU.S.A

RESPONDENTS:

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1. THE ASSISTANT PROVIDENT FUND
COMMISSIONER, THE EMPLOYEES PROVIDENT FUND
ORGANISATION, KERALA REGION, BHAVISHYANIDHI
BHAVAN, PATTOM PALACE P.O., THIRUVANANTHAPURAM.

2. UNION OF INDIA, REPRESENTED BY THE
SECRETARY TO THE GOVERNMENT,
MINISTRY OF LABOUR, NEW DELHI.

R2 BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR GENERAL
R1 BY STANDING COUNSEL SMT.T.N.GIRIJA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

WP(C) NO. 18233 OF 2007 - U

Dated this the 15th day of June, 2007

J U D G M E N T

The petitioner is the Managing Director of a company engaged in the manufacture of blood bags in their factory at Thiruvananthapuram. The first respondent initiated proceedings under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act (for short 'the Act') which is in progress. Having been informed that the basis for the proceedings of the first respondent is a report of the concerned Enforcement Officer, the petitioner by Ext.P5 application sought for a copy of the said report. Subsequently, by Ext.P7, the petitioner again sought for a copy of the report as also an opportunity to cross-examine the officers who prepare the inspection report. However, without considering the same, by Ext.P11, the Managing Director of the company has been directed to appear in person, although the company is represented by an authorised representative in the 7A proceedings. The petitioner challenges Ext.P11 as

without jurisd iction and also seeks a direction to the first respondent to consider and pass orders on Exts.P5 and P7.

2. I have heard the learned Standing Counsel for the Provident Fund Organisation also. He would submit that the first respondent has every power to enforce attendance of any person going by the provisions of Section 7A of the Act including the Managing Director of the company against whom Section 7A proceedings are initiated.

3. But, on a perusal of Section 7A of the Act, I find that, that power is the same power as vested in a court under the Code of Civil Procedure, 1908. Under the Code of Civil Procedure, it is settled law that the court cannot summon a party in a case. Here, the petitioner, the Managing Director of the company, is in the position of a party to the litigation before the first respondent. That being so, the first respondent cannot, in exercise of powers under Section 7A(2) of the Act, direct the Managing Director to be present in person.

Accordingly, Ext.P11 to the extent it directs the Managing Director to appear in person is quashed. There would be a further direction to the first respondent to consider and pass orders on Exts.P5 and P7 in accordance with law before proceeding further.

The writ petition is disposed of with the above direction.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007